

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **VICE CHAIRMAN JOHN C. BOHLINGER**, on February 17, 2001 at 11:15 A.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. John C. Bohlinger, Vice Chairman (R)
Sen. Chris Christiaens (D)
Sen. John Cobb (R)
Sen. Jim Elliott (D)
Sen. Bill Glaser (R)
Sen. Duane Grimes (R)
Sen. Don Hargrove (R)
Sen. Ken Miller (R)
Sen. Emily Stonington (D)
Sen. Ken Toole (D)

Members Excused: Sen. Dale Mahlum, Chairman (R)

Members Absent: None.

Staff Present: Leanne Kurtz, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 470, 2/6/2001
SB 479, 2/6/2001
SB 482, 2/6/2001

Executive Action: SB 407 DP; SB 482 DP
SB 359 DPAA; SB 433 DPAA
SB 470 DPAA; SB 479 DPAA

{Tape : 1; Side : A; Approx. Time Counter : 0}

EXECUTIVE ACTION ON SB 407

Motion: SEN. TOOLE moved that SB 407 DO PASS.

Discussion:

SEN. JOHN BOHLINGER said that the bill will allow local governments to amend or renew contracts without going through the bidding process. This could be a savings to the taxpayers.

SEN. KEN TOOLE had asked how long these contracts are generally written for. Five years was the usual time.

Vote: Motion carried 7-2 with Cobb and Elliott voting no. A roll call vote was taken.

EXECUTIVE ACTION ON SB 359

Motion: SEN. COBB moved that SB 359 BE AMENDED **EXHIBIT**(los40a01).

Discussion:

Leanne Kurtz, Legislative Staff, explained that the amendments incorporate SEN. BOHLINGER'S request to state the agreement may specify the duration of the district which may not exceed ten years. Numbers two, three and four clarify the ten year duration.

SEN. JIM ELLIOTT said the time frame did not have anything to do with re-authorizing annexation; it has to do with the amount of time that the developer has to develop the property after an agreement has been signed.

Vote: Motion that SB 359 AMENDMENT BE ADOPTED carried unanimously.

Motion/Vote: SEN. COBB moved that SB 359 DO PASS AS AMENDED. Motion carried 7-4 with Glaser, Grimes, Mahlum, and Miller voting no. A roll call vote was taken.

HEARING ON SB 479

Sponsor: SEN. DON HARGROVE, SD 16, BELGRADE

Proponents: Mona Jamison, Representing Gallatin County
Jane Jelinski, MT Assoc. of Counties
Janet Ellis, MT Audubon
Ann Hedges, MT Environmental Information Center
Linda Stoll, MT. Assoc. of Planners
Tim Davis, Director, MT Smart Growth Coalition

Opponents: None

Opening Statement by Sponsor:

SEN. DON HARGROVE, SD 16, BELGRADE. Senate Bill 479 has two points. In Section 6, it provides an additional option for a landowner to proceed with development rather than just selling the land. Section 9 has an additional paragraph which places a requirement on the Department of Commerce to develop cluster development models. They have said they can do this and are ready and willing. He related a story that happened about six years ago. A man had a ranch and wanted to develop it. There was a river with about six miles of river front. He wanted to do a cluster development. He had a certificate of survey for 20 acre lots and had already spent approximately \$200,000 on some of the developments. Legislation to help him had been brought to this committee in 1997, but it failed. He then decided to develop the land in another way. He has made a great deal of money but hadn't been able to do it his way. The river is all taken up. Roads are all over.

This bill is in the public interest. In 1999 another bill was presented; but failed again. Two things have changed. Time has passed and there are people who are concerned about the way development of the land is going. The other thing that has changed is now there is a growth policy that happened at the end of the last session. With a cluster development, one can bypass some of the bureaucracy and some of the public interest criteria. Infrastructure of the land is returned back to the county. Easements are given to the county so there is agricultural land and land for habitat.

He proposed an amendment **EXHIBIT (los40a02)** that would take out the option of a deed restriction. That seemed to be too temporary for some of those people who wanted to support the bill.

Proponents' Testimony:

Mona Jamison, Representing Gallatin County. Gallatin County is in support of this bill. On page 19 and 20, in the whereas portion of the bill, there are statements that show what the bill is proposing: the preservation of Montana's unique landscape. For the most part it is the agriculturists who provide that landscape. The other benefit is, when most people live in cluster developments, it reduces local government costs for infrastructure by in-building. That is smart development. Water, sewer and roads already exist. Cluster development is defined on page 3.

Section 6 states that a community MAY proceed for public input as to where to go about cluster development. In order to maintain open space, there has to be various options through regulation that the community and the landowner would agree upon.

The benefits are short time frames for review. There are procedures that provide an incentive. Government regulations can choose to exempt these cluster developments from various other requirements of law which include exemptions from environmental assessments, park dedication requirements, etc.

Jane Jelinski, MT Assoc. of Counties. The Association stands in support of the bill.

Janet Ellis, MT Audubon. This bill has been simplified and does what it needs to do. With the deed restriction removed, that would protect the open spaces. A seller can impose deed restrictions. So if the deeded restriction can easily be changed with the agreement of the seller, that could endanger open spaces.

Ann Hedges, MT Environmental Information Center. Cluster bills have not had their support. With the amendment of the deed restriction, they can now support the bill. On page 8, line 7 and 8, local governments may establish exemptions from the following which is the EA criteria which is different under MEPA (Montana Environmental Protection Act) and the review criteria which is referred to as public interest review criteria. The is reason they would allow local governments to do this. Many issues that would be raised in those two instances are still going to be required under Title 76-3-501. That provision in the law says that the governing body of every county, city or town shall adopt and provide for enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional area and for the avoidance of subdivision which would involve unnecessary environmental degradation and a danger to health, safety or welfare. There

should be a simple amendment on page 12. On line 25, the words "by January 1, 2003" could be added. This would give the Department of Commerce a deadline.

Linda Stoll, MT Assoc. of Planners. They were delighted that they could support this bill this time.

Tim Davis, Director, MT Smart Growth Coalition. They support the bill because it is an important tool for communities to be able to protect farms and ranches and to develop in a good manner.

Opponents' Testimony: None

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Questions from Committee Members and Responses:

SEN. JIM ELLIOTT asked what the Department felt about an amendment to put a time frame on the Department of Commerce.

Dave Cole, Community Development, Department of Commerce answered that the time frame would not be a problem. There would be no fiscal impact because they have had a plan to update the models for cluster development.

SEN. JOHN COBB asked, on page 7, line 24 - 26, if that was not a mistake with the amendment that had been proposed for taking out line 27. Do they want to lock that up forever? He felt that whole sentence should be taken out. **Mona Jamison** said that the purpose is to make it irrevocable. What may happen under regulations is that "x" amount of space must be in perpetuity and perhaps a certain part may not have to be under the conservation easement.

SEN. COBB replied that there would be a conflict with Chapter 6. **Ms. Jamison** said she believed that is still operational. Even conservation easements in perpetuity can be changed if one petitions the court to show the purposes are no longer being served.

SEN. HARGROVE felt that **Ms. Jamison** answered it very well. There probably won't be too many takers with the thought of perpetual versus a limited easement. "In perpetuity" is the carrot for the proponents. It is a quid pro quo and that was the intention.

SEN. KEN MILLER asked what prohibited the man from developing the cluster. **SEN. HARGROVE** said that basically it was the "public interest" criteria. The county kept him going back and jumping through hoops. It is very hard to define. The county couldn't tell him either, but every time he submitted something and spent

a few more thousand dollars on an engineer, they would say okay but now do this. It is bureaucracy.

SEN. MILLER then asked what limited Gallatin County of adopting cluster development incentives. Couldn't they have done that on their own. **SEN. HARGROVE** said they probably could have, but they had no guidance to do it differently. In Gallatin County, they like to see a case go to court because they then know what they can do.

SEN. COBB pointed to Section 2, page 3, lines 2 and 3 which promote preservation of open space. Since number 6 is out there hanging by itself, it doesn't apply to cluster developments at all. **SEN. HARGROVE** said there are two things. One is to promote preservation of open space. Cluster development does that and is complimentary. They also want to promote cluster development which has the fallout of open space.

SEN. MILLER wanted to know why the bill is necessary. On line 3 it states that minimized cost to the local citizens and on line 15, building sites on smaller lots in order to reduce capital and maintenance costs. The cost and what the market wants is what should be the driving force. If that is true, it seems like cluster developments would take place. The Department of Commerce would see that everyone would want to do it. The DEQ would come along and say this was a great thing and they could start waiving EIS's.

SEN. HARGROVE reiterated that the bill provides some quid pro quo: "If you want to waive some of these things, we will give you something for it." The public will pay fewer taxes.

Closing by Sponsor:

SEN. HARGROVE closed. This bill is an option and gives some flexibility. It allows, under the growth policy, these decisions to be made prior to things happening. A growth policy may say this couldn't be done in a county, but this way the developer knows what he can do before he starts.

HEARING ON SB 482

Sponsor: **SEN. PETE EKEGREN, SD 44, CHOTEAU**

Proponents: **Jim Dusenberry, President, MT Fire Districts Assoc.**
John Semple, MT Fire Alliance
Nancy Butler, General Counsel, State Fund

Opponents: None

Opening Statement by Sponsor:

SEN. PETE EKEGREN, SD 44, CHOTEAU. This bill will give volunteer fire districts the option of covering their self-employed volunteer firefighters with Workmen's Compensation. Workmen's comp for volunteers is based on the rate code for their full-time career. If a firefighter is self-employed and has opted out of workmen's comp, he or she is not covered under the current disability portion of the plan. Because Montana has an agriculture and lumber base, a number of firefighters fall under this category. This bill would give the local volunteer fire departments the option of covering them at minimum level and provide disability pay on Montana minimum wage. This will have no fiscal impact on the general fund.

There should be a small amendment on page 5, line 3. The word "shall" should be changed to "may."

Proponents' Testimony:

Jim Dusenberry, President, MT Fire Districts Assoc. This is a bill about neighbors helping neighbors. It is a volunteer firefighter service. It is a 24 hour, 7 day a week job with no pay. There is a great deal of dedication by the volunteer firefighters. Most fire districts are manned by self-employed farmers and ranchers and small businessmen in the rural areas. In many cases these people cannot afford workmen's comp or other insurance protection. They have opted out of workmen's comp for various reasons. Because they have opted out of workmen's comp it precludes them from the disability portion of this plan. It doesn't opt them out of the medical portion of this plan. Firefighters are conscientious of safety but things do happen.

John Semple, MT Fire Alliance. They asked for the committee's support.

Nancy Butler, General Counsel, State Fund. The State Fund is one option for volunteer firefighters to buy their coverage through Workmen's Compensation. The State Fund has a concern about self-employed individuals who have not elected to cover themselves through the Workmen's Compensation Act. If one is a volunteer and hasn't covered himself through their regular employment, their wages cannot be included in calculating their wage loss benefit. This bill provides an option to assume a wage so those individuals can be covered and, at the same time, for insurance companies, it sets the premium for that as well. She supported

the amendment. It allows the governing bodies to elect whether or not to cover these individuals.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. JOHN COBB wanted to know where the \$5.15 an hour, on line 30, page 4, came from. **Nancy Butler** answered that it was the recommended amount by the group who had come forward to propose this bill.

SEN. COBB felt that putting numbers in statute is not so good because ten years from now it could mess things up. **Ms. Butler** said that was right and maybe they would like to change that.

SEN. BILL GLASER asked if there was a reason for the restriction to only fire districts rather than fire departments or areas. They are different. **John Semple** responded that in the bill it specifies rural fire districts. There are rural fire districts, rural fire departments and rural fire areas which may not be the same. All are different. On page 3, line 15, is the existing language and on page 4, line 28 through page 5, line 4, the definition includes all the above.

SEN. KEN MILLER asked if this is to cover them just while fighting a fire. **Mr. Semple** replied that it is just while fighting a fire.

SEN. GLASER asked if the bill really said what the firefighters wanted it to say. **Ms. Butler** said the intent was that only if you are covered as a volunteer firefighter and you also happen to be self-employed and had opted yourself out of coverage in your own self-employment, this bill would allow you to get the benefits allowed in 7 (b) which is based on actual contact hours, plus this assumed wage. It is all tied in to the section dealing with volunteer firefighters.

SEN. EMILY STONINGTON asked if subsection (b), lines 24 through 27 on page 4, says that they are going to be covered while fighting a fire. **Ms. Butler** says the key words are "based on the number of volunteer hours of each firefighter." This is for the limited benefits.

SEN. STONINGTON pointed out on page 3, line 17-19 it defines volunteer hours. Lines 15 and 16 define volunteer firefighter.

SEN. MILLER said on page 3, it continues on line 18 "and time spent at the employer's premises. If a volunteer is on call while he is at his job, then he would be covered under this.

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Closing by Sponsor:

SEN. EKEGREN closed. He said there would be amendments made either on the Senate floor or in the House.

HEARING ON SB 470

Sponsor: **SEN. DALE BERRY, SD 30, HAMILTON** - presented SB 470 for **SEN. JERRY O'NEIL, SD 42, KALISPELL** who was excused for a death in the family.

Proponents: Dale Williams, Flathead County Commissioner

Opponents: Alec Hansen, MT League of Cities/Towns
Tim Davis, Director, MT Smart Growth Coalition

Opening Statement by Sponsor:

SEN. DALE BERRY, SD 30, HAMILTON. He stated that **SEN. O'NEIL'S** mother had passed away and would like to present the bill to the committee.

This bill has been heard in some other forms due to a regulating process and is similar to the "donut bill." This deals specifically with developing land outside the city limits. Different size towns and municipalities go from one to three miles. This bill would restrict the city's ability to control that subdivision process. It allows for some zoning districts to be created.

Proponents' Testimony:

Dale Williams, Flathead County Commissioner. He wanted to support the bill. One of the hardest things he faces is county and city cooperation. The residents of the county, through no fault of their own and through no ability to either vote or control some of the tax situations that are put on them, are controlled by the city. Under current state law, the zoning laws that have been adopted by the counties would stand. The problem is the city believes they need the ability to make zoning laws because eventually those areas will come into the city. In his

area, there have been areas controlled virtually by city zoning and there has never been one thought of annexing those areas. At the very least, those powers are given by an agreement between cities and counties based on an extension of service plans that the cities put forth. There is accountability for city action as well as county action in that cooperative endeavor. Being reviewed every five or ten years is also a necessary thing.

Opponents' Testimony:

Alec Hansen, MT League of Cities/Towns. The intent of the bill is fuzzy. Flathead County no longer has a city/county planning board. Most cities do work with the county. What should cities do as far as planning is concerned about the donut area around their city. Zoning is necessary for the protection of property values. This bill is intended for the Flathead County area but unfortunately it would cover the state.

Tim Davis, Director, MT Smart Growth Coalition. This bill would take away the ability of the cities and towns to protect public health and safety. It is a sweeping bill.

Questions from Committee Members and Responses:

SEN. EMILY STONINGTON said the bill is limiting the interim zoning ordinances found on page 2, line 19. Several requirements have been put in the bill that would affect zoning ordinances.

Alec Hansen said language is taken out that applies to the different classes of cities and their ability to zone certain areas. In Section 4, line 23-24, the language removes the ability to do plat reviews in the areas adjacent to the cities and towns.

SEN. STONINGTON asked **Gordon Morris, Director, MT Assoc. of Counties** what he thought of the bill. He had looked at the bill and the bill is straight forward. Section 5, page 4, line 8, is the heart of the bill. Section 76-2-112 repeals the section that grants powers to incorporated communities to plan a zone outside of the incorporated area. Section 76-2-310 provides for municipal zoning and subdivision zoning outside of the incorporated area. Section 76-2-311 repeals the regulatory authority of municipalities in the extraterritorial area outside of the incorporated areas. Section 76-2-312 repeals an exclusion that is in the law for extraterritorial authority for municipalities which have a commission manager form of government. He did not understand why they were excluded to start with.

SEN. DON HARGROVE asked if this bill would do anything to joint cities and counties like Butte/Silver Bow. **Mr. Hansen** said he didn't think it would affect them.

Closing by Sponsor:

SEN. BERRY closed. He liked the bill. He didn't see the bill as a clutter for the rest of the state. If it addresses a problem in Flathead County, it would be helpful for all cities. Oversight is a concern. The donut bill discussion comes up frequently. The city tells people what is going to happen to their land without representation. There is a planning crisis in Montana and there is a process. County commissioners must be reviewing these things from a county perspective which is where they should be governed. Hamilton is growing and there are many ideas of what should be happening. His town and county are working together. This bill has value for the counties.

EXECUTIVE ACTION ON SB 433

Motion: **SEN. ELLIOTT** moved that **SB 433 BE AMENDED EXHIBIT (los40a03)**.

Discussion:

SEN. JIM ELLIOTT said there is a provision in federal law that counties with a significant amount of forest lands receive 25% of the gross receipts from those federal forest lands. Congress in the last session passed a law that would allow counties the option of taking that 25% of the forest receipts within their counties or taking what is called "full payment." Full payment is the average of the three highest years of receipts between 1986 and 1994. In the case of most counties, full payment is considerably higher than the 25%. There is some contention concerning the bill. The amendment should diminish some of that contention. It would base the allocation of counties based on federal law rather than on the present formula which is in proportion to the acreage of forest reserve in each county.

The federal reserve special fund goes to the state auditor. The state auditor shall apportion all forest reserve funds and earned interest for allocation among the counties in which the forest reserve is situated based upon federal law. The full payment that is coming is not done in exactly that way so that is why it was based upon federal law.

The amendment should bring more clarity to the bill. He felt that there would be more amendments as the bill progressed forward.

Vote: Motion that **SB 433 AMENDMENT BE ADOPTED** carried unanimously.

Motion: SEN. COBB moved that **SB 433 DO PASS AS AMENDED**.

Discussion:

SEN. ELLIOTT said this bill allows the counties to choose between the two options and allows them to choose the 15% for projects on federal forest lands or on county lands. The fiscal note shows no impact.

Vote: Motion **carried unanimously**.

{Tape : 2; Side : B; Approx. Time Counter : 0}

EXECUTIVE ACTION ON SB 470

Motion: SEN. MILLER moved that **SB 470 DO PASS**.

Discussion:

SEN. STONINGTON informed the committee what the repealers do. She does not want to support the bill.

SEN. MILLER felt that the bill is a good one. It has bothered him that the city can dictate to those outside the city limit. The county commissioners should be handling these zoning issues.

Motion/Vote: SEN. STONINGTON moved that **SB 470 BE TABLED**. Motion failed 4-7 with Cobb, Elliott, Glaser, Grimes, Hargrove, Mahlum, and Miller voting no. A roll call vote was taken.

Motion: SEN. HARGROVE moved that **SB 470 BE AMENDED** to put Section 76-2-112 back in.

Discussion:

SEN. HARGROVE felt that planning is not a dirty word and doesn't have any final say in the outcome. He felt that to put Section 76-2-112 back in would make the bill more acceptable.

SEN. CHRIS CHRISTIAENS also felt that planning was advisable and wanted to have that Section put back in.

SEN. KEN TOOLE was concerned that as a result of a problem in Flathead County, this bill would be too sweeping. It is common to be regulated by people whom one cannot vote for.

Vote: Motion that **SB 470 AMENDMENT BE ADOPTED** carried 10-1 with Miller voting no.

Motion/Vote: **SEN. COBB** moved that **SB 470 DO PASS AS AMENDED**. Motion carried 8-3 with Bohlinger, Stonington, and Toole voting no. A roll call vote was taken.

EXECUTIVE ACTION ON SB 479

Motion: **SEN. COBB** moved that **SB 479 BE AMENDED (EXHIBIT 2)**.

Discussion:

SEN. COBB explained that the deed restriction was taken out.

Leanne Kurtz explained that a conceptual amendment was suggested on page 12, line 25. The words "by January 1, 2003" would be added. This addressed the time frame for the Department of Commerce to have models of cluster development ready for use. This was added to **(EXHIBIT 2)**

Vote: Motion **carried unanimously**.

Motion/Vote: **SEN. COBB** moved that **SB 479 DO PASS AS AMENDED**. Motion carried 7-3 with Cobb, Glaser, and Miller voting no. A roll call vote was taken.

EXECUTIVE ACTION ON SB 482

Motion: **SEN. COBB** moved that **SB 482 DO PASS**.

Discussion:

SEN. CHRISTIAENS said that a fiscal note was required.

SEN. GLASER said fiscal notes on these bills today won't be ready till Monday. It will have to be taken up on the Senate floor. He continued to feel that the bill was not written for the correct intention. But he would like to have the bill go forward and take care of any problems on the Senate floor.

SEN. ELLIOTT said he trusted the Chairman and Vice Chairman. He asked for a definition of an extraordinary fiscal note.

SEN. CHRISTIAENS said that if the bill had a large fiscal note, it would be re-referred to Senate Finance Committee. Some bills that were tabled had fiscal notes as low as \$23,000.

SEN. GLASER said that if there were a fiscal impact it would be on the local fire district or fire service area. If the fiscal note would have a technical problem, then the Chairman would have to decide if the bill would have to come back to the Committee.

Vote: Motion **carried unanimously.**

ADJOURNMENT

Adjournment: 1:40 P.M.

SEN. DALE MAHLUM, Chairman

MARY GAY WELLS, Secretary

DM/MW

EXHIBIT (los40aad)